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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 990

AMERICANA OF PUERTO RICO, INC.,
Respondent,

vs.

SAMUEL R. KAPLUS and J. KAPLUS & SONS, INC.,
Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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This brief is submitted on behalf of the respondent, Americana of Puerto Rico, Inc., in opposition to the petition of Samuel R. Kaplus and J. Kaplus & Sons, Inc. for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in the above entitled action on October 27, 1966.

Opinions Below

The opinion of the United States District Court, District of New Jersey, is set forth at pages 9 through 13 of the petition. The opinion of the Circuit Court of Appeals for

the Third Circuit is set forth at pages 27 through 40 of the petition.

Questions Presented

1. Does 28 U.S.C. §1738 require the courts of the states to accord full faith and credit to a judgment of the Superior Court of Puerto Rico?

2. Is Congress empowered by the Constitution to require the courts of the states to accord full faith and credit to a judgment of the Superior Court of Puerto Rico?

Statement

The statement appearing on pages 4 and 5 of the petition sets forth adequately the facts relevant to this petition. However, two matters alluded to in the petition require clarification.

On page 5 of the petition the petitioner accurately states that just prior to oral argument the court was informed by the plaintiff (respondent herein) that for purposes of diversity jurisdiction the plaintiff was a citizen of the State of New York, and not of the Commonwealth of Puerto Rico, as had been previously alleged. Therefore, the diversity question became moot and those portions of the opinion dealing with the question of diversity jurisdiction are irrelevant for the purposes of this petition.

At page 8 of the petition, petitioner suggests that judgments of the courts of the various states of the Union may not enjoy full faith and credit in the courts of Puerto Rico. We believe this matter to be irrelevant, but for purpose of clarification, the Court's attention is respectfully directed to *Lichtig* v. *Lichtig*, 81 P.R.R. 716 (1960), which held that a New York judgment was entitled to full faith and credit

in the courts of Puerto Rico. Because Puerto Rican statutory law so provided, the court in *Lichtig* specifically did not reach the issue whether 28 U.S.C. §1738 or the "full faith and credit" clause of the Constitution would require the same result. *Id.* at.722, n. 5.

Reasons for Denying the Writ

I.

The statutory question was decided in accordance with a well-established line of cases.

Section 1738 of Title 28, United States Code provides that judicial proceedings of any state, territory or possession shall have the same full faith and credit throughout the United States, its territories and possessions, as they have in the state, territory or possession from which they are taken. Petitioner contends that Puerto Rico is neither a state, territory nor possession, and therefore the statute does not apply to a judgment of a Puerto Rican court. Since, prior to 1952 Puerto Rico was unquestionably a "territory" where that term was used in Congressional enactments, *New York ex rel. Kopel* v. *Bingham,* 211 U. S. 468 (1909); *Detres* v. *Lions Bldg. Corp.,* 234 F. 2d 596 (7th Cir. 1956), the argument more narrowly boils down to this: that Puerto Rico ceased to be included as a territory within the meaning of federal statutes when it was redesignated a commonwealth. This argument, raised in connection with other statutes, has been firmly laid to rest by a well-reasoned line of cases. *Moreno Rios* v. *United States,* 256 F. 2d 68 (1st Cir. 1958); *United States* v. *De Jesus,* 289 F. 2d 37 (2d Cir. 1961) *cert. denied,* 366

U. S. 963 (1961); *Lummus Co.* v. *Commonwealth Oil Refining Co.*, 195 F. Supp. 47 (S.D.N.Y. 1961); aff'd 297 F. 2d 80 (2nd Cir. 1961) *certiorari denied, sub-nom, Dawson* v. *Lummus Co.*, 368 U. S. 986 (1962); *Detres* v. *Lions Bldg. Corp., supra.*

The rationale of these cases is, perhaps, best expressed in *Moreno, supra,* where, in deciding that the Narcotic Drugs Import and Export Act continued to apply to Puerto Rico after 1952, the court had this to say at pp. 71, 72:

> "* * * [W]hen Congress uses the term "territory", this may be meant to be synonymous only with "place" or "area", and not necessarily to indicate that Congress has in mind the niceties of language of a political scientist who might say that Puerto Rico under its commonwealth status has ceased to be an unincorporated "territory" of the United States.
>
> There can be no doubt that the Narcotic Drugs Import and Export Act applied to Puerto Rico just prior to the date in 1952 when the Commonwealth came into being. That Act, originally passed in 1909 (35 Stat. 614), was amended in 1922 (42 Stat. 596) so as to define the term "United States", when used in a geographical sense, as including "the several States and Territories and the District of Columbia". * * *
>
> If, then, the Congress originally intended to apply the Act to Puerto Rico, it would seem clear, in view of the general provision of the Federal Relations Act to the effect that the statutory laws of the United States not locally inapplicable shall have the same force and effect in Puerto Rico as in the United States, that *it was not necessary for the Congress to alter specifically all outstanding statutes thereto previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth in 1952.* (Emphasis supplied.)

In light of the foregoing, we submit that petitioner's argument that the statute does not encompass Puerto Rico is so obviously without merit that it is unworthy of review by this Court.

II.

The Constitutional question was decided in accordance with well-established principles laid down by this Court.

Although Article IV, Section 1 of the Constitution, the "full faith and credit clause", speaks only of states, this Court has made clear that the powers of Congress are not circumscribed by that clause. In *Embry* v. *Palmer*, 107 U. S. 3 (1882) it was held that Congress had power to prescribe the effect of judgments of the Supreme Court of the District of Columbia by virtue of its power under the Constitution to legislate over the District, and to enact all necessary and proper legislation for executing such power over the District. Following the same rationale, this Court held that Congress had power under the Constitution to accord full faith and credit to the judgments of territorial courts. *Atchison, Topeka & Santa Fe Ry.* v. *Sowers*, 213 U. S. 55 (1909); *Alaska Packers Assn.* v. *Industrial Accident Comm.*, 294 U. S. 532 (1935). Full faith and credit was extended to a judgment of a sovereign Indian nation. *Cornells* v. *Shannon*, 63 F. 305 (8th Cir. 1894). It is clear that Constitutional sources other than Article IV, §1 enable Congress to accord full faith and credit to the judicial proceedings of political entities other than states.

The opinion of Judge Biggs demonstrates (1) that Puerto Rico is a territory within the meaning of Article

IV §3 of the Constitution, and (2) that Congress has the power by virtue of that Section, together with the "necessary and proper" clause, to prescribe the effect to be given to judgments of the Puerto Rican courts. The opinion is founded on the well-settled principles established by this Court in the above cited cases.

III.

Petitioner has shown no valid reason for review at this time.

There is as yet no conflict among the Circuits on the question decided below, nor has the question been decided in a way as to conflict with the applicable decisions of this Court. Although writs of certiorari are sometimes granted for the purpose of resolving conflicts actually existing among the Circuits, the mere possibility that such conflict may arise in the future is hardly a valid reason for review. Moreover, since the decision of the Third Circuit is in accordance with well-established principles laid down by this Court, there is no reason to believe that other Circuits will decide the question differently.

The extensive economic interchange between Puerto Rico and the continental United States does not support petitioner's contention that the issue requires the immediate attention of this Court. The decision of the Third Circuit, holding that judgments of the Superior Court of Puerto Rico are entitled to full faith and credit, is not disruptive of, and in fact tends to foster those close economic ties.

CONCLUSION

For the foregoing reasons we respectfully submit that the petition should be denied.

Respectfully submitted,

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